

this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

[54 FR 49492, Nov. 30, 1989, as amended at 56 FR 59866, Nov. 26, 1991; 60 FR 66717, Dec. 26, 1995]

## **PART 546—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION**

Sec.

546.1 Definitions.

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

SOURCE: 54 FR 49517, Nov. 30, 1989, unless otherwise noted.

### **§ 546.1 Definitions.**

The terms used in §§ 546.2 and 546.3 shall have the same meaning as set forth in §§ 552.13(b) and 563.22(g) of this chapter.

[59 FR 44622, Aug. 30, 1994]

### **§ 546.2 Procedure; effective date.**

(a) A Federal mutual savings association may combine with any depository institution, provided that:

(1) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(2) Any resulting Federal savings association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;

(3) In the case of a combination with a bank that is a member of the Bank Insurance Fund, any resulting Federal savings association conforms to the requirements of sections 5(c) and 10(m) of

the Home Owners' Loan Act under the standards set forth in section 5(c)(5) of the Home Owners' Loan Act, and in the case of a combination with any other depository institution, any resulting Federal savings association conforms within the time prescribed by the OTS, to the requirements of section 5(c) of the Home Owners' Loan Act; and

(4) The resulting institution shall be a mutually held savings association, unless:

(i) The transaction involves a supervisory merger;

(ii) The transaction is approved under part 563b of this chapter; or

(iii) The transaction involves a transfer in the context of a mutual holding company reorganization under section 10(o) of the Home Owners' Loan Act.

(b) Each Federal mutual savings association, by a two-thirds vote of its board of directors, shall approve a plan of combination evidenced by a combination agreement. The agreement shall state:

(1) That the combination shall not be effective unless and until the combination receives any necessary approval from the Office pursuant to § 563.22 (a) or (c), or in the case of a transaction requiring a notice pursuant to § 563.22(c), the notice has been filed, and the appropriate period of time has passed or the OTS has advised the parties that it will not disapprove the transaction;

(2) Which constituent institution is to be the resulting institution;

(3) The name of the resulting institution;

(4) The location of the home office and any other offices of the resulting institution;

(5) The terms and conditions of the combination and the method of effectuation;

(6) Any charter amendments, or the new charter in the combination;

(7) The basis upon which the resulting institution's savings accounts will be issued;

(8) If the Federal mutual savings association is the resulting institution, the number, names, residence addresses, and terms of directors;

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(9) The effect upon and assumption of any liquidation account of a disappearing institution by the resulting institution; and

(10) Such other provisions, agreements, or understandings as relate to the combination.

(c) Prior written notification to, notice to, or prior written approval of, the Office pursuant to § 563.22 of this chapter is required for every combination. In the case of applications and notices pursuant to 563.22 (a) or (c), the Office shall apply the criteria set out in § 563.22 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(d) Where the resulting institution is a Federal mutual savings association, the Office may approve a temporary increase in the number of directors of the resulting institution provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 544.1 of this chapter within a reasonable period of time.

(e) Notwithstanding any other provision of this part, the Office may require that a plan of combination be submitted to the voting members of any of the mutual savings associations that are constituent institutions at a duly called meeting(s), and that the plan, to be effective, be approved by such voting members.

(f) A conservator or receiver for a Federal mutual savings association may combine the association with another insured depository institution without submitting the plan to the association's board of directors or members for their approval.

(g) If a plan of combination provides for a resulting Federal mutual savings association's name or location to be changed, its charter shall be amended accordingly. If the resulting institution is a Federal mutual savings association, the effective date of the combination shall be the date specified in the approval; if the resulting institution is not a Federal savings association, the effective date shall be that prescribed under applicable law. Approval of a merger automatically cancels the Federal charter of a Federal

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association that is a disappearing institution as of the effective date of merger, and the association shall, on that date, surrender its charter to the Office.

[59 FR 44622, Aug. 30, 1994]

#### § 546.3 Transfer of assets upon merger or consolidation.

On the effective date of a merger or consolidation in which the resulting institution is a Federal association, all assets and property of the disappearing institutions shall immediately, without any further act, become the property of the resulting institution to the same extent as they were the property of the disappearing institutions, and the resulting institution shall be a continuation of the entity which absorbed the disappearing institutions. All rights and obligations of the disappearing institutions shall remain unimpaired, and the resulting institution shall, on the effective date of the merger or consolidation, succeed to all those rights and obligations, subject to the Home Owners' Loan Act and other applicable statutes.

[59 FR 44623, Aug. 30, 1994]

#### § 546.4 Voluntary dissolution.

A Federal savings association's board of directors may propose a plan for dissolution of the association. The plan may provide for either:

(a) Appointment of the Federal Deposit Insurance Corporation (under section 5 of the Act and section 11 of the Federal Deposit Insurance Act, as amended or section 21A of the Federal Home Loan Bank Act, as amended) as receiver for the purpose of liquidation;

(b) Transfer of all the association's assets to another association or home-financing institutions under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that association's payment of all the association's outstanding obligations and issuance of share accounts or other evidence of interest to the association's members on a *pro rata* basis; or

(c) Dissolution in a manner proposed by the directors which they consider best for all concerned.